

FREEDOM OF INFORMATION ACT REQUEST 4-10-2014

Food and Drug Administration  
Division of Freedom of Information  
Office of the Executive Secretariat, OC  
12420 Parklawn Drive  
ELEM-1029  
Rockville, MD 20857



April 10, 2014

This request is made pursuant to 5 USC §552 (Freedom of Information Act).

The Food and Drug Administration (FDA) has pirated our copyrighted research, patent and trade secrets to plagiarize and duplicate our suite of computer driven software tools that are designed to enhance food safety and food defense. In doing so, the FDA has violated procurement integrity laws.

Please provide documentation relating to the “pass through” contract to Battelle Memorial Institute and Valbrea Technologies that was used by the FDA to avoid open and fair competition as the FDA, Battelle Memorial Institute and Valbrea Technologies duplicated FoodQuestTQ’s line of commercial food safety risk management tools.

The Competition in Contracting Act (CICA) of 1984, generally governs competition in federal procurement contracting. Other statutes allow for the use of “other transaction authority” (OTA) for research and development (R&D) or prototypes of promising new technologies without full and open competition. The Procurement Integrity Act (PIA) addresses specific rules for the conduct of all government procurements. Since there were no circumstances permitting other than full and open competition under CICA, the use of OTA by FDA, and any lawful exemptions to the PIA, the FDA is in violation of statutes and regulations that require open and fair competition in the procurement of inherently non-governmental goods and services in the matter of *FoodQuestTQ versus the Food and Drug Administration and the Department of Health and Human Services*.<sup>1</sup>

We are requesting any and all documents relating in any way to the “pass through” contract scheme used by the FDA, Battelle Memorial Institute and Valbrea Technologies to avoid open and fair competition in the FoodQuestTQ matter. This includes any documents generated pursuant to the requirement under Federal Acquisition Regulation (FAR) 6.305 – Availability of the Justification, FDA publicly posts Justification and Approvals (J&As) for Noncompetitive Awards, i.e., Justifications for Other Than Full and Open Competition (JOFOCs).

We are particularly interested in any and all documents or materials whether in written or electronic form including all e-mails and e-mail strings that relate in any way to the “pass through” contract and any collusion and/or conspiracy among individuals to intentionally violate the procurement integrity laws of the United States. The requested documents include all communications among and between the FDA, Battelle Memorial Institute and Valbrea Technologies as they participated in establishing the

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<sup>1</sup> Kate M. Manuel (June 30, 2011). Congressional Research Service, ***Competition in Federal Contracting: An Overview of the Legal Requirements*** as retrieved from the World Wide Web on April 10, 2014 at: <http://www.fas.org/sgp/crs/misc/R40516.pdf>

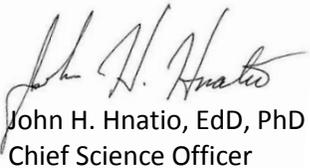
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“pass through” contract scheme that was used to unlawfully duplicate FoodQuestTQ’s line of commercial software.

We request expedited processing since the results of this request may indicate the existence of gross fraud waste and abuse in the FDA and within the Department of Health and Human Services (HHS). The existence of gross fraud waste and abuse involving government employees responsible for the safety and security of the U.S. food supply represents a real and imminent threat to the safety of the U.S. public. The intentional breach of procurement integrity and law by the FDA and HHS represents a compelling need for public disclosure.

We also request that fees for providing the above information be waived based on the requestor’s status as a free-lance journalist who intends to broadly publish the results of this Freedom of Information Act request.

Sincerely,



John H. Hnatio, EdD, PhD  
Chief Science Officer

cc: Mr. Dan Levinson, OIG-HHS  
Mr. William Straub, OGE  
Ms. Nancy Gunderson, HHS  
Ms. Glenda Barfell, FDA  
Mr. Ralph White, GAO  
Mr. Eric Holder, Attorney General, USDOJ